

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Respondent,

v.

SON VAN NGUYEN,

Movant.

No. 2:99-cr-0433 WBS AC

ORDER

Respondent moves to stay this habeas action filed pursuant to 28 U.S.C. § 2255, pending a decision in the Ninth Circuit that may impact the merits of this case, on the ground that a stay will conserve government resources. Respondent seeks a stay until decisions are rendered by the Ninth Circuit in the consolidated appeals involving movant's codefendants, United States v. Minh Huynh, et al., C.A. No. 16-10078, and United States v. John That Luong, C.A. No. 16-10220. The consolidated appeals may impact movant's claims premised on Johnson v. United States, 135 S. Ct. 2551 (2015). Respondent alternatively requests an extension of time until January 31, 2017, to file its answer to movant's § 2255 motion. ECF No. 1742. In its reply in support of the motion, respondent raises new arguments regarding additional cases pending in Ninth Circuit and United States Supreme Court as reasons to stay this action or extend its deadline to respond. ECF No. 1746. Movant opposes the motion (ECF No. 1743) and moves to strike respondent's reply on the ground that it is untimely and presents new arguments (ECF No. 1747).

Respondent's request appears to be premised on the inherent authority of this court to control its docket in the interests of efficiency and fairness. However, in light of the several "Johnson cases" currently being decided by the judges of this court, the undersigned finds it most fair, practical, and efficient to proceed on the merits of each such case in the order that it is filed.

Because the court is denying the motion for stay or extension, and because it is not clear that Local Rule 430.1 applies to post-conviction motions such as this one, movant's motion to strike will be denied.

Accordingly, IT IS HEREBY ORDERED that:

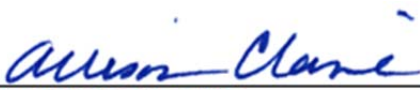
1. Respondent's request that the court stay this action or alternatively extend the deadline to file an answer to January 31, 2017 (ECF No. 1742), is denied.

2. Within thirty days after the filing date of this order, respondent shall file and serve an answer to movant's motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 (ECF No. 1725). Respondent shall include with the answer any and all transcripts or other documents relevant to the determination of the issues presented in the motion. See Rule 5, Rules Governing Section 2255 Proceedings.

3. Within thirty days after the filing date of respondent's answer, movant may file a traverse.

4. Movant's motion to strike (ECF No. 1747) is denied.

DATED: October 6, 2016


ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE